IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.2961 OF 2004

Akhilesh Kumar Rai, .. Applicant

Vs

The State of Maharashtra, .. Respondent

Ms. Anjali Patil Contractor for the applicant.

Mr V.B.Konde-Deshmukh, APP for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 18th AUGUST, 2004.

PC:

1. Heard Ms. Patil, learned counsel for the applicant and Mr.Konde-Deshmukh, learned A.P.P for the respondent.

2. The applicant has approached this Court for being released on bail in C.R.No.426 of 2003 registered at Ghatkopar Police Station under sections 302, 326,324,323,143,144,147,148, 149 of the Indian Penal Code. The occurrence in the instant case took place on 15.12.2003 at about 18.45 hours in which the applicant and eight others allegedly committed murder of one Deepak Pagare by means of sharp edged weapons and hocky-stick. The occurrence was witnessed by the three witnesses.

3. Ms.Patil, learned counsel for the applicant,

submits that none of the eye-witnesses has specifically attributed an overtact to the applicant. After taking me through the statements of the eye-witnesses, she further submits that co-accused Salim alone assaulted the deceased and in so far as the other accused are concerned they allegedly assaulted the others and that they did not sustain serious injuries. She further submits that the identification parade, in which the applicant was identified as one of the assailants, suffers from serious infirmities and, therefore, no reliance can be placed upon it for any purpose whatsoever.

4. I have perused the statements of the eye-witnesses and in particular of Shilpan Vyas and Imtias Qureshi as also the test identification parade. Though Shilpan Vyas has not attributed a specific overtact either to the applicant or the other accused, the other eye-witnesses and in particular Imtias Qureshi specifically attributed an overtact to all the accused. The post mortem report supports their version. It shows that the deceased suffered about 15 wounds on his person. Out of 15 wounds, except two, all other were incised wounds. The two wounds were apparently caused with blunt object. It supports the prosecution case that all the accused assaulted the deceased and not

Salim alone as tried to be contended by Ms Patil. Had Salim alone assaulted the deceased, he would not have suffered injuries at Sr.Nos.10 and 13. The deceased was virtually butchered by the accused. It is very hard to believe that only one accused, i.e. Salim had inflicted all the blows on the person of the deceased. Moreover, the chopper and the clothes of the applicant were recovered at his instance and both had blood stains. Keeping the statements of the eye-witnesses and the post mortem report in view and considering the overall facts and circumstances of the case, in my opinion, this is not a fit case to enlarge the applicant on bail. The application is rejected.

. While rejecting the application, I shall not be understood to have expressed any opinion on merits of the case. The Sessions Court shall decide the case uninfluenced by the observations made in this order.

(D.B.BHOSALE, J.)